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No. 92-1037

MOTION FILED

JAN 12 1993

IN THE

Supreme Court of the United States

October Term, 1992

RALPH J. MILLER, M.D.,

Petitioner,

vs.

INDIANA HOSPITAL, a corporation; HENRY F. HILD; DONALD F. SMITH; WILLIAM R. McMILLEN; JOHN S. SIMPSON; THOMAS S. BARBOR; SAMUEL W. JACK, JR.; MRS. C. FRED HILDEBRAND; MRS. WANDA M. WEYANDT; HARRY C. McCREARY; C. WILMER JOHNSTON; GEORGE M. EVANS; DONALD S. BRODY; ROGER J. RESCHINI; JOSEPH KOVALCHICK; WILLIAM G. EVANS, M.D.; MELVIN C. WILLIAMS, M.D.; ROBERT G. GOLDSTROHM, M.D.; DAVID C. HUGHES, M.D.; RALPH F. WALDO, M.D.; HERBERT L. HANNA, M.D.; RICHARD N. FREDA, M.D.; FRANK WEINER, M.D.; HENRY MITCHELL, M.D.; RALPH R. BROWN, M.D.; COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF HEALTH; H. ARNOLD MULLER, M.D.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* AND BRIEF OF *AMICI CURIAE* VIRGINIA RAY AND JAMES E. WHITE, IN SUPPORT OF PETITIONER

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INDIANA HOSPITAL, a corporation; HENRY F. HILD; DONALD F. SMITH; WILLIAM R. McMILLEN; JOHN S. SIMPSON; THOMAS S. BARBOR; SAMUEL W. JACK, JR.; MRS. C. FRED HILDEBRAND; MRS. WANDA M. WEYANDT; HARRY C. McCREARY; C. WILMER JOHNSTON; GEORGE M. EVANS; DONALD S. BRODY; ROGER J. RESCHINI; JOSEPH KOVALCHICK; WILLIAM G. EVANS, M.D.; MELVIN C. WILLIAMS, M.D.; ROBERT G. GOLDSTROHM, M.D.; DAVID C. HUGHES, M.D.; RALPH F. WALDO, M.D.; HERBERT L. HANNA, M.D.; RICHARD N. FREDA, M.D.; FRANK WEINER, M.D.; HENRY MITCHELL, M.D.; RALPH R. BROWN, M.D.; COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF HEALTH; H. ARNOLD MULLER, M.D.,

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* IN SUPPORT OF PETITIONER, RALPH J. MILLER, M.D.

AND NOW, come M. Virginia Ray and James E. White, *amici curiae, pro se,* and file the following Motion for Leave to File a Brief *Amici Curiae* in Support of Petitioner, Ralph J. Miller, M.D.

1. M. Virginia Ray is the daughter of Joseph D. White, deceased, and resides at 1776 Overlook Drive, Ambridge, Beaver County, Pennsylvania 15003. James E. White is the son of Joseph D. White, and resides in Indiana County, Pennsylvania.

2. M. Virginia Ray and James E. White seek to file a brief *amici curiae* in support of Petitioner, Ralph J. Miller, M.D. Respondents have refused to consent to the submission of a brief *amici curiae* by Mrs. Ray and Mr. White.

3. Mrs. Ray and Mr. White are interested in this matter because Joseph D. White was their father and his death was the occurrence which ostensibly led to the initial request for revocation of Dr. Miller's medical staff privileges at Indiana Hospital. Moreover, they believe that the care and treatment rendered by Dr. Miller to their father was satisfactory in all respects and that the charges against Dr. Miller and the revocation of his staff privileges were an injustice.

4. This case will affect the interests of Mrs. Ray, Mr. White and other similarly situated in present and future actions concerning peer review decisions; the interests of patients in patient-physician relationships will also be affected by the decision of this Honorable Court.

5. A copy of the brief which Mrs. Ray and Mr. White intend to file in the event that this Motion is granted is attached hereto as Exhibit A.

WHEREFORE, M. Virginia Ray and James E. White respectfully request this Honorable Court to grant their Motion for Leave to File a Brief *Amici Curiae* in Support of Petitioner, Ralph J. Miller, M.D.

Respectfully submitted,

By: _____
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By: _____
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EXHIBIT A

IN THE

Supreme Court of the United States

October Term, 1992

No. 92-1037

RALPH J. MILLER, M.D.,

Petitioner,

vs.

INDIANA HOSPITAL, a corporation; HENRY F. HILD; DONALD F. SMITH; WILLIAM R. McMILLEN; JOHN S. SIMPSON; THOMAS S. BARBOR; SAMUEL W. JACK, JR.; MRS. C. FRED HILDEBRAND; MRS. WANDA M. WEYANDT; HARRY C. McCREARY; C. WILMER JOHNSTON; GEORGE M. EVANS; DONALD S. BRODY; ROGER J. RESCHINI; JOSEPH KOVALCHICK; WILLIAM G. EVANS, M.D.; MELVIN C. WILLIAMS, M.D.; ROBERT G. GOLDSTROHM, M.D.; DAVID C. HUGHES, M.D.; RALPH F. WALDO, M.D.; HERBERT L. HANNA, M.D.; RICHARD N. FREDA, M.D.; FRANK WEINER, M.D.; HENRY MITCHELL, M.D.; RALPH R. BROWN, M.D.; COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF HEALTH; H. ARNOLD MULLER, M.D.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR M. VIRGINIA RAY AND JAMES E. WHITE, *AMICI CURIAE*, IN SUPPORT OF PETITIONER, RALPH J. MILLER, M.D.

INTEREST OF *AMICI CURIAE*

M. Virginia Ray is the daughter of Joseph D. White, deceased, and resides at 1776 Overlook Drive, Ambridge, Beaver County, Pennsylvania 15003. James E. White is the son of Joseph D. White, and resides in Indiana County, Pennsylvania. Mrs. Ray and Mr. White are interested in this matter because Joseph D. White was their father and his death was the occurrence which ostensibly led to the initial request for revocation of Dr. Miller's medical staff privileges at Indiana Hospital. Moreover, they believe that the case and treatment rendered by Dr. Miller to their father was satisfactory in all respects and that the charges against Dr. Miller and the revocation of his staff privileges were an injustice.

This case will affect the interests of Mrs. Ray, Mr. White and others similarly situated in present and future actions concerning peer review decisions; the interests of patients in patient-physician relationships will also be affected by the decision of this Honorable Court.

ARGUMENT

M. Virginia Ray and James E. White are daughter and son, respectively, of Joseph D. White, whose death while a patient at Indiana Hospital ostensibly led to the revocation of Dr. Miller's privileges as a staff physician at Indiana Hospital.

On February 13, 1977, Joseph D. White, age 81, was taken to the Indiana Hospital emergency room by Mr. Virginia Ray and James E. White following an illness of several weeks' duration, during which time Joseph White had refused medical treatment and had deteriorated to a poor state of health. He was examined by Dr. Lee Dippery, an emergency room physician, who then admitted him to the care of Dr. Miller, a board-certified urologist, after conferring with Dr. Miller by telephone. On February 16, 1977, Joseph White died of cardiac arrest following an unsuccessful resuscitation attempt supervised by one of the Respondents, Melvin C. Williams, M.D. Subsequently, Respondent Williams, who was an employee of the hospital, filed a request with the medical staff executive committee for the suspension or revocation of Dr. Miller's hospital privileges, allegedly over concerns for the quality of care provided by Dr. Miller to Joseph White. Details of the events which followed that request and which led to the revocation of Dr. Miller's hospital privileges and to the assassination of his professional and personal character in the Indiana County community may be found in the Statement of the Case in Dr. Miller's Petition for Writ of Certiorari.

Mrs. Ray and Mr. White were completely satisfied with the medical care provided by Dr. Miller and they were shocked and angered by the hospital's use of their father's case to persecute Dr. Miller. In addition, seven highly qualified physicians testified in support of Dr.

Miller at the hearings conducted by the hearing committee of the medical staff in 1977. By contrast, only one physician was called in support of Dr. Williams' charges that Dr. Miller's care was substandard; it was later revealed that this witness was a divorce client of the lawyer prosecuting Miller at the hearings. Curiously, Dr. Williams never came forward to testify against Dr. Miller, despite the fact that he had triggered the entire series of events.

The action of a hospital in terminating the staff privileges of a physician has a tremendous affect on the rights of patients to be treated by the physician of their choice, especially in an area where the hospital possesses a virtual monopoly. The actions of the Respondents in this case effectively prevented patients of Indiana Hospital—the only hospital in the county—from engaging Dr. Miller's services in his specialty of urology and reduced to one the number of urologists with hospital privileges in Indiana County, thereby completely eliminating consumer choice for such services. Moreover, the Petition for Writ of Certiorari indicates that the actions of the Respondents not only had little, if anything, to do with quality of care concerns, but rather were undertaken with the intent of entrenching the Respondents' economic power by eliminating Dr. Miller and his fledling multi-specialty, ambulatory care center as viable competitors.

Inasmuch as the anti-competitive actions of the Respondents have been ratified by the decisions of the lower courts and would similarly be ratified by this Honorable Court should the Petition for Writ of Certiorari be denied, M. Virginia Ray and James E. White respectfully request that this Court grant review of the order of the Court of Appeals for the Third Circuit and the issues raised in Dr. Miller's Petition.

CONCLUSION

For the foregoing reasons, M. Virginia Ray and James E. White, as *amici curiae*, request that this Honorable Court grant the Petition for Writ of Certiorari of Ralph J. Miller, M.D.

Respectfully submitted,

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